

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID LEE SPOTTED EAGLE, JR.,

Defendant.

CR-11-87-GF-BMM-01

**FINDINGS AND
RECOMMENDATIONS TO
REVOKE DEFENDANT'S
SUPERVISED RELEASE**

I. Synopsis

The United States accused Mr. Spotted Eagle of violating his conditions of supervised release by failing to report to his assigned probation office within 72 hours of release from the custody of the Bureau of Prisons. He admitted to the violation. Mr. Spotted Eagle's supervised release should be revoked. He should be placed in custody for six months, with twenty three months of supervised release to follow.

II. Status

On November 8, 2011, Mr. Spotted Eagle pleaded guilty of to the crime of Assault Resulting in Serious Bodily Injury. (Doc. 22.) The Court sentenced him to 57 months of incarceration, with credit for time served, followed by thirty-six months of supervised release. (Doc. 29.) Mr. Spotted Eagle's first term of supervised release began on November 2, 2015.

On February 4, 2016, The Court revoked Mr. Spotted Eagle's supervised release because he absconded from supervision, failed to notify his probation officer after being terminated from employment, failed to submit to a random urinalyses, and failed to show up to a scheduled meeting with is probation officer. The Court sentenced Mr. Spotted Eagle to three months in custody with thirty-three months of supervised release to follow. (Doc. 52.) His second term of supervised release began on May 2, 2016.

On July 27, 2016, The Court revoked Mr. Spotted Eagle's supervised release because Mr. Spotted Eagle again failed to report to the United States Probation Office within seventy-two hours of his release. (Doc. 65.) The Court sentenced him to four months incarceration with twenty-nine months of supervised release to follow. His current term of supervised release began on September 12, 2016.

Petition

On September 16, 2016, the United States Probation Office filed a petition asking the Court to revoke Mr. Spotted Eagle's supervised release. The USPO accused Mr. Spotted Eagle of violating the standard conditions of his supervised release by once again failing to report to his assigned probation office within seventy-two hours of his release from prison. Based on the petition, United States District Judge Susan Watters issued a warrant for Mr. Spotted Eagle's arrest. (Doc. 68.)

Initial appearance

Mr. Spotted Eagle appeared before the undersigned on September 28, 2016, in Great Falls, Montana. Federal Defender Hank Branom accompanied him at the initial appearance. Assistant United States Attorney Bryan Dake represented the United States.

Mr. Spotted Eagle said he had discussed the petition with Mr. Branom and understood the allegations. Mr. Spotted Eagle waived the preliminary hearing, and the parties consented to proceed with the revocation hearing before the undersigned.

Revocation hearing

Mr. Spotted Eagle appeared at the revocation hearing with Mr. Branom. Mr. Dake appeared on behalf of the United States. Mr. Spotted Eagle admitted to

violating the conditions of his supervised release.

Mr. Spotted Eagle's violation grade is Grade C, his criminal history category is I, and his underlying offense is a Class C felony. He could be incarcerated for up to 24 months. He could be ordered to remain on supervised release for up to twenty-nine months, less any custodial time imposed. The United States Sentencing Guidelines call for three to nine months in custody. The defense recommended a sentence of four months incarceration. The United States argued for a sentence in the higher of the sentencing guidelines.

III. Analysis

Mr. Spotted Eagle's admitted violating the conditions of his supervised release. The violations are serious and warrant revocation of his supervised release. Mr. Spotted Eagle should be incarcerated for six months, with twenty-three months of supervised release to follow.

IV. Conclusion

Mr. Spotted Eagle was advised that the above sentence would be recommended to United States District Judge Brian Morris. The Court reminded him of his right to object to these Findings and Recommendations within 14 days of their issuance. The undersigned explained that Judge Morris would consider Mr. Spotted Eagle's objection, if it is filed within the allotted time, before making

a final determination on whether to revoke Mr. Spotted Eagle's supervised release and what, if any, sanction to impose.

The Court **FINDS:**

David Lee Spotted Eagle violated the standard conditions of his supervised release by failing to report to the United States Probation Office within seventy-two hours of his release from the Bureau of Prisons.

The Court **RECOMMENDS:**

The District Court should enter the attached Judgment, revoking Mr. Spotted Eagle's supervised release and committing Mr. Spotted Eagle to the custody of the United States Bureau of Prisons for six months, with twenty-three months of supervised release to follow.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO
OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de

novo determination by the district judge, and may waive the right to appear and allocute before a district judge.

Dated the 29th day of September, 2016.



John Johnston
United States Magistrate Judge